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REMARKS

Claims 1-3, 5-12, 14-23 and 25-32 are pending, with claims 1, 10, 19, and 25 being independent. Claims 3, 11 and 27 have been cancelled without prejudice. Reconsideration and allowance of the above-referenced application are respectfully requested.

Rejections under 35 U.S.C. § 112

Claims 3 and 27 stand rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite. Without conceding the propriety of this rejection, claims 3 and 27 have been cancelled, without prejudice, to obviate the rejection.

Rejections under 35 U.S.C. § 103

Claims 1-3, 5-12, 14-18, and 25-32 stand rejected under 35 U.S.C. § 103(a) as allegedly being upatentable over U.S. Patent No. 6,738,970 issued to Kruger et al. (hereinafter "Kruger") in view of U.S. Patent No. 6,560,776 issued to Breggin et al. (hereinafter "Breggin"). Claims 19, 20, 22 and 23 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Breggin in view of Kruger. Claim 21 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Breggin in view of Kruger, and further in view of U.S. Patent Publication No. 2002/0156831 issued to Suorsa et al. (hereinafter "Suorsa"). Since the body of the 6-16-2008 final Office Action includes the exact same rejections as the 11-28-20007 Office Action, the Response filed 2-26-2008 is hereby incorporated by reference. In addition, the above rejections and the contentions presented in the Office's Response to Arguments are respectfully traversed.

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Independent claim 1 recites, in part (emphasis added), "generating a comparison of a current software installation, to a target computer, with a previous software installation, to the same target computer, in a series of two or more software installations [...]; creating installation data for a resource, based at least in part on the comparison, the resource including attributes including a dynamic attribute and a static attribute, the dynamic attribute is an attribute that should have changed between the previous software installation and the current software installation, the static attribute is an attribute that should remain unchanged between the previous software installation and the current software installation; identifying from the installation data the dynamic attribute that was not changed in the current software installation[.]"

In contrast, Kruger describes a method and apparatus for "identifying changes made to a computer system due to software installation" in order to assist computer administrators in installing software on a large number of computer systems, where such administrators "prefer software to be installed over many computer systems in a consistent manner to make supporting that software easier."[1] Kruger's process involves the following[2]:

> The state of the computer system is recorded before the software is installed and, after the software is installed, the recorded state is compared against the state of the computer system. Changes are written into a manifest, which may be combined with any new or changed files and an installation program to produce a package which can be sent to another computer system for installation.

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[1] See Kruger at Title and col. 1, line 61, to col. 2, line 39.
[2] See Kruger at Abstract.

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Kruger describes, in detail, the process of recording a "before" state[3], installing software[4],

recording an "after" state[5], comparing these two states, performing post processing and

generating a manifest[6], all for a single master computer.

      In the 2-26-2008 Response, it was noted that this portion of Kruger cannot be considered

as teaching creating installation data for a resource that has a dynamic attribute, which is an

attribute that should have changed between successive installations on the same target computer.

In response, the Office again cites to Column 5, lines 18-29, and states, "the modification date of

a file can be considered to be a 'dynamic attribute' since the modification date of the file should

change in order to indicate when the change occur between successive installations. The

filename of a file can be considered to be a 'static attribute' since the filename of the file should

not change in order to maintain file consistency between successive installation."[7] With all due

respect to the Office, this statement make no sense, since at this cited stage of the processing in

Kruger, no installation (let alone successive installations) has yet occurred, and the system has no

conception of whether any of the filename and modification date information being collected

will or will not be impacted by an installation. Rather, what is being described here in Kruger is

the process of recording the "before" state of the master computer before an installation has

occurred. Thus, none of the attributes here, for which data is being collected, can be considered

a dynamic attribute, which is "an attribute that should have changed between the previous

software installation and the current software installation", as claimed.

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[3] See Kruger at col. 4, line 28, to col. 7, line 28.
[4] See Kruger at col. 7, lines 29-46.
[5] See Kruger at col. 7, line 50, to col. 8, line 11.
[6] See Kruger at col. 8, line 12, to col. 12, line 50.
[7] See 6-16-2008 Office Action at page 22.

Furthermore, as noted in the previous two Responses, Kruger does not teach or suggest "identifying from the installation data the dynamic attribute that was not changed in the current software installation", as recited in claim 1. In response to this point, the Office continues to rely on Column 8, lines 34-40.[8] However, this portion of Kruger is describing his process of comparing the "after" state of the master computer to the "before" state of the same master computer.[9] Thus, at this point in the processing of Kruger, only a single installation has occurred, namely the installation of the software on the master computer.

In stark contrast, the language of claim 1 recites, "identifying from the installation data the dynamic attribute that was not changed in the current software installation" (emphasis added). The installation data is referring back to the data created "based at least in part on the comparison" (emphasis added). The comparison is referring back to "generating a comparison of a current software installation, to a target computer, with a previous software installation, to the same target computer, in a series of two or more software installations" (emphasis added). Thus, given that the portions of Kruger cited by the Office all refer to the process of determining differences that result from a single installation of software to a single master computer, it is, strictly speaking, impossible for the claim language to read on the cited portions of Kruger.

Furthermore, attention is called to the fact that Kruger does go on to discuss subsequent installation after the portions cited by the Office. After the comparing of the "before" and "after" states, Kruger goes on to describe certain post processing that is performed on the results of the comparison[10], and then states[11]:

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[8] *See* 6-16-2008 Office Action at page 22-23.
[9] *See* Kruger at col. 7, line 25, to col. 9, line 39.
[10] *See* Kruger at col. 11, line 21, to col. 12, line 35.
[11] *See* Kruger at col. 12, lines 36-46.

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> Same node pruner 256 removes from the supertree all nodes marked as "same"
> because the objects corresponding to these nodes will not need to be altered
> during subsequent installations.
>
> After post processor 250 has completed its operation, the resulting tree is referred
> to as manifest. Post processor 260 places the manifest in manifest storage 260.
> The manifest tells an installation program on any subsequent machine how to
> make the changes that will perform the installation on the subsequent machine.

Thus, as this portion of Kruger makes clear, Kruger is teaching a process of determining how a master computer has changed during an installation of software, so that this change information can be stored in a manifest for use in installing that same software to different computers. Therefore, Kruger does not in any way teach or suggest, (emphasis added), "generating a comparison of a current software installation, to a target computer, with a previous software installation, to the same target computer, in a series of two or more software installations [...]; creating installation data for a resource, based at least in part on the comparison, the resource including attributes including a dynamic attribute and a static attribute, the dynamic attribute is an attribute that should have changed between the previous software installation and the current software installation, the static attribute is an attribute that should remain unchanged between the previous software installation and the current software installation; identifying from the installation data the dynamic attribute that was not changed in the current software installation", as recited in claim 1. Since Breggin does not cure these deficiencies of Kruger, independent claim 1 should be in condition for allowance for at least the above reasons.

Moreover, claim 1 includes addition limitations for which the Office relies on Breggin. In the 2-26-2008 Response, it was pointed out that Breggin does not disclosure a "software

product development" as required by claim 1. In response, the Office quotes Column 3, line 66,

to Column 4, line 6, of Breggin, stating[12]:

> "...the install program is created by a builder or installer on a computer that is
> hereinafter referred to as the build computer. The builder or installer writes a
> program or script describing how the software and supporting files are to be
> installed on a target computer.") Note that the install program is created by a
> builder or installer on a computer (software product development).

However, the install program is not the software product. Rather, it the software used to deliver

and install the software product, which was developed previously. Breggin does not address

software product development, but rather software installation development.[13]

Furthermore, it was noted in the 2-26-2008 Response that Breggin's exception relates to a

difference, not the absence of an expected difference. The Office fails to specifically address

this point, and instead refers back the arguments based on Kruger for the dynamic attribute, and

states that, "Breggin is relied upon for its specific teaching of presenting potential problems with

the current installation."[14] Thus, the Office has acknowledged with respect to claim 1 that

Breggin does not teach a dynamic attribute as claimed. In light of this, and the arguments

presented above regarding Kruger, it should now be clear that neither Breggin, Kruger, nor any

combination of Breggin and Kruger, teaches or suggests, "presenting potential problems with the

current software installation based on the identified dynamic attribute to facilitate verification of

an installer for the software product development", as recited in claim 1 in combination with the

other elements of claim 1.

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[12] *See* 6-16-2008 Office Action at page 21.
[13] *See* Breggin at Title, Abstract, and throughout.
[14] *See* 6-16-2008 Office Action at page 24.

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Therefore, the proposed Kruger-Breggin combination does not teach or suggest each and every limitation of claim 1, and claim 1 should be in condition for allowance. Independent claims 10 and 25 recite similar limitations as claim 1; thus, claims 10 and 25 should be in condition for allowance for at least similar reasons as discussed above. Claims 2-3, 5-9, 12, 14-18, 26 and 28-32 depend generally from claim 1, 10, or 25, and are allowable for at least the reasons provided above. The rejection of claim 11 has been obviated by the cancellation of claim 11 without prejudice.

In addition, a prima facie case of obviousness has not been established with respect to claim 19 because the suggested Breggin-Kruger combination does not teach or suggest all the elements of claim 19. For example, the Office states that Breggin fails to disclose "a dynamic attribute and a static attribute for one or more resources associated with a software installer" and then turns to Kruger to cure the deficiencies of Breggin. However, as discussed above, Kruger also does not teach or suggest "a dynamic attribute and a static attribute for one or more resources associated with a software installer" as recited in claim 19. Therefore, the suggested Breggin-Kruger combination does not teach or suggest all the elements of claim 19, and claim 19 should be allowed.

Suorsa does not cure the noted deficiencies of Breggin and Kruger. Claims 20-23 depend from independent claim 19, and thus these dependent claims are allowable for at least the reasons provided above.

The foregoing comments made with respect to the positions taken by the Office are not to be construed as acquiescence with other positions of the Office that have not been explicitly

contested. Accordingly, the above arguments for patentability of a claim should not be construed

as implying that there are not other valid reasons for patentability of that claim or other claims.

In view of the above, a notice of allowance is respectfully requested. In the absence of

such, a telephone interview with the Examiner and the Examiner's supervisor is requested to

discuss the subject matter of the independent claims and the cited art.

No fee is believed to be due, however please apply any charges or credits to deposit

account 06-1050.

Respectfully submitted,

Date: _Aug 18, 2008_

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